

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: FACEBOOK CONSUMER
PRIVACY LITIGATION

Case No. [18-md-02843-VC](#) (JSC)

**ORDER RE: FACEBOOK'S APPEAL
OF SPECIAL MASTER'S ORDER
REGARDING DEPOSITIONS OF FIVE
FORMER NAMED PLAINTIFFS**

Re: Dkt. No. 782

Now pending before the Court is Facebook's appeal of the Special Master's order regarding Facebook's request to take the deposition of five former named plaintiffs. (Dkt. No. 782; *see also* Dkt. No. 709 (setting forth the procedures for appeal of Special Master discovery orders.) After carefully considering the appellate record (Dkt. No. 781-3), reviewing the Special Master's order *de novo*, *see* Fed. R. Civ. P. 53(f)(3), and having held a hearing with the parties on January 11, 2022, the Court affirms the challenged aspects of the Special Master's order without prejudice to Facebook renewing its request after it has taken the depositions of the Named Plaintiffs.

DISCUSSION

Discovery of absent class members "is not routinely granted" and is generally ordered only when the defendant shows a need for the discovery, *Dukes v. Wal-Mart Stores, Inc.*, No. 01-CV-2252 CRB JSC, 2013 WL 1149754, at *1 (N.D. Cal. Mar. 19, 2013), or "the class member has inserted herself into the litigation." *A.B. v. Pac. Fertility Ctr.*, No. 18-CV-01586-JSC, 2019 WL 6605883, at *1 (N.D. Cal. Dec. 3, 2019). An absent class member inserts herself into the litigation (or has been inserted into the litigation) when she is identified on initial disclosures as persons with knowledge of claims or defenses, *id.* at *1, or submits a declaration in support of class

1 certification. *Id.* This Court has held that withdrawing as a named plaintiff is the opposite of
2 inserting oneself into the litigation. *Id.* (“the proposed deponents have done the opposite of
3 asserting themselves into the litigation: having initially agreed to serve as named plaintiffs, they
4 have withdrawn and instead currently have no more involvement in the case than any other absent
5 class member who has not submitted a declaration in support of class certification or been
6 identified as a witness on initial disclosures”). Thus, the former named plaintiffs at issue on this
7 motion have not inserted themselves into this litigation such that their involvement alone justifies
8 their depositions. That they withdrew without prejudice to later seeking to become a class
9 representative is of no moment. If the issue ever arises, the district court will decide if a former
10 named plaintiff can be reinserted as a named plaintiff. If it is allowed, depositions and other
11 discovery of that new named plaintiff would be allowed. But that has not happened and may
12 never happen.

13 The question, then, is whether Facebook has shown a need for the former named plaintiff
14 depositions. As discussed at oral argument, as of yet they have not. Accordingly, Facebook’s
15 demand to take the depositions of five former named plaintiffs is denied without prejudice to
16 renewal after they take the depositions of the Named Plaintiffs and if they have an actual need for
17 the depositions.

18 The Court notes that the circumstances of the proposed deponents’ withdrawal from the
19 case does not mean they can never be deposed. When Plaintiffs complained about the burden in
20 answering interrogatories for the then 24 named plaintiffs, the Court suggested that they reduce
21 the number of named plaintiffs as such a large number is unwieldy in any event. The Court did
22 not rule that if Facebook shows that such discovery is necessary, absent class members, including
23 former named plaintiffs, cannot be deposed. And, in terms of reducing the burden on absent class
24 members, the least burdensome would be to depose an absent class member who previously
25 agreed to serve as a named plaintiff.

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This Order disposes of Docket No. 782.

IT IS SO ORDERED.

Dated: January 12, 2022


JACQUELINE SCOTT CORLEY
United States Magistrate Judge

United States District Court
Northern District of California